

EXHIBIT 38

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

COMMONWEALTH OF
MASSACHUSETTS, et al.,

Plaintiffs,

v.

NATIONAL INSTITUTES OF HEALTH,
et al.,

Defendants.

Case No. _____

DECLARATION OF KIRK DOMBROWSKI

I, Kirk Dombrowski, hereby declare:

1. I am the Vice President for Research and Economic Development at the University of Vermont and State Agricultural College (University of Vermont or UVM), a position I have held since April 2020. As Vice President of Research and Economic Development, I oversee research strategy, administration, integrity, and technology development at both the University of Vermont and the associated Larner College of Medicine. Prior to holding this position, I was the Associate Dean for Research in the College of Arts and Sciences at the University of Nebraska at Lincoln. Over the last two decades I have served as Principal Investigator of numerous research grants from the National Institutes of Health (NIH), including serving as the Principal Director of the University of Nebraska-Lincoln's Center of Biomedical Research Excellence: Rural Drug Addiction Research Center, funded by the National Institute of General Medicine. I hold a B.A. in Anthropology from the University of Notre Dame and a PhD in Anthropology from the City University of New York.

2. As the Vice President for Research and Economic Development, I have personal knowledge of the matters set forth below, or have knowledge of the matters based on my review of information and records gathered by my staff.
3. I am providing this declaration to explain certain impacts of National Institutes of Health (“NIH”) Notice Number NOT-OD-25-068, *Supplemental Guidance to the 2024 NIH Grants Policy Statement: Indirect Cost Rates*, which purports to immediately reduce indirect costs payments under NIH grants to 15%.
4. The University of Vermont is Vermont’s flagship research university. UVM performs externally funded research in biomedical sciences, clinical research, agricultural research, basic sciences, engineering, environment, education, and nursing sciences. Extramural support for research at UVM has surpassed \$260 million in each of the last two years, and UVM research serves as a key driver of economic development in Vermont, providing support to industry and community that ranges from workforce development to industry supporting core facilities, to talent attraction for physicians, scientists and engineers. Our biomedical and clinical science research strengths include nationally recognized achievements including such areas as cardiovascular, stroke, cancer, infectious disease, behavioral health, and lung biology research. UVM currently hosts 253 active, multiyear research projects that receive more than \$310 million of support commitments from NIH over the course of those projects. Annual NIH-funded research expenditures at UVM have been in excess of \$50 million per year over the last several years.
5. The University of Vermont has a cross-agency Negotiated Indirect Cost Rate Agreement (“NICRA”). The current indirect cost rate (referred to “F&A” in NIH NOT-OD-25-068

for the “facility” and “administration” components) is derived by Financial & Cost Accounting Services within University Financial Services at UVM in accordance with the White House Office of Management and Budget's Uniform Guidance for federal awards and widely accepted University Costing Standards (DS-2). UVM's current Indirect Cost schedule was negotiated in 2023 and sets approved rates through FY26. Numerous rates are included in this agreement, as appropriate to a range of research and educational conditions. The top Indirect Cost (“IDC”) Rate for FY24 for the University of Vermont's NICRA is 53%.

6. The University of Vermont's total blended IDC rate for NIH funding across all supported activities is approximately 29%.
7. NIH's reduction of UVM's IDC rates will eliminate approximately \$8 million in NIH-funding per year in research support for costs not currently allowed on the federal government's Uniform Guidance, but which are necessary to allow research to take place. Such costs range from accounting/auditing of grant expenditures, personnel and human resources support for researchers employed on federally supported projects, and facilities costs including utilities, depreciation, and upkeep for those facilities in which the research takes place. Were other federal research supporting agencies to follow the lead of NIH in reducing indirect support for research without regard to the actual costs associated with such unreimbursable expenditures, the cost to UVM would likely exceed \$25 million per year.
8. The lowering of NIH indirect support will immediately impact the University's ability to draw critical funds used to pay expenses associated with necessary grant administration tasks in compliance with federal spending and reporting guidelines. Such activities, as

well as facility costs such as utilities and building safety, remain necessary to comply with federal laws. UVM's ability to seek patents for new technologies, support emerging local companies, and provide an R&D infrastructure for Vermont are also activities supported by indirect funds.

9. Absent adequate support for these functions, alternative sources of support will be required. This will require greater state investment in UVM or a rise in tuition rates charged to UVM students. Alternatively, with a decline in UVM's ability to support research, fewer grant dollars will come to Vermont. This will have a significant impact on UVM's ability to continue to drive economic development in the state. The normally accepted economic impact multiplier of 3 implies that a 20% decline in UVM's research activity (~\$40 million) would result in an economic loss to Vermont of \$120 million annually.
10. In addition, NIH supported clinical trials at the University of Vermont and the University of Vermont Medical Center help bring novel treatment opportunities to Vermont. Indirect costs associated with NIH-funded trials are a main source of support for UVM's clinical trials facility. As the state's only research university and university affiliated hospital/health network, declines in NIH indirect support for clinical trials facilities will lessen our ability to provide medical advancement to the people of Vermont. This impact will be felt state-wide.
11. The loss of the negotiated IDC rate and significant decline in our ability to support research at UVM would also cause lasting harm to the University's research program. The University forthcoming elevation to Carnegie Research 1 ("R1") status has significantly elevated our ability to recruit high performing researchers and research

trainees to Vermont. Doctoral degrees granted by UVM are up 20% and research expenditures are up more than 70% over the last 5 years. Numerous UVM “spin-out” companies have received significant investment from private funders. All of these results have had a significant impact on Vermont communities and the state’s economy, and elevated our ongoing ability to attract high performing students to Vermont. A reversal of this research success and growth will undermine many years of university and state investment at a time where demographic challenges in the northeastern United States are undermining higher education enrollment and access to affordable, high-quality education.

12. UVM next anticipates to draw funds on or around Friday, February 14. At that time, the reduced IDC rate will impact the University’s ability to pay for and maintain its research programs immediately.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 9th day of February, 2025, at Burlington, Vermont.

Kirk Dombrowski
Vice President for Research and Economic
Development

The University of Vermont